

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

ASD SPECIALTY HEALTHCARE, INC. d/b/a
ONCOLOGY SUPPLY COMPANY
2801 Horace Shepard Drive
Dothan, Alabama 36303,

Plaintiff,

v.

ROBERT G. HICKES, M.D.
1301 Trumansburg Road
Suite Q
Ithaca, NY 14850,

Defendant.

CIVIL ACTION

NO.: 1:05cv592 - T

**MOTION FOR LEAVE TO FILE AMENDED COMPLAINT
AND JOIN ADDITIONAL DEFENDANT**

The plaintiff, ASD Specialty Healthcare, Inc., d/b/a Oncology Supply Company ("ASD" or "Plaintiff"), by and through its counsel, hereby moves this Honorable Court for leave to file an amended complaint and to join an additional defendant. In support of its motion, Plaintiff relies upon the statements and legal arguments contained in the contemporaneously-filed memorandum of law and briefly states the following:

1. ASD filed this action against Defendant Robert G. Hickes, M.D. ("Hickes" or "Defendant"), on June 22, 2005, to obtain payment for the medical and pharmaceutical products it supplied, in an amount exceeding \$177,253.77.

2. On September 29, 2005, the Court entered a scheduling order which provides that motions to amend the pleadings or to join additional parties shall be filed on or before January 27, 2006.

3. On October 18, 2005, ASD served Hickes' counsel with written discovery requests including Requests for Admission, attached hereto as Exhibit A.

4. On November 17, 2005, Hickes served ASD's counsel with responses to Requests for Admission, attached hereto as Exhibit B.

5. Hickes' responses indicate that it is his position that his professional corporation, Robert G. Hickes, M.D., P.C., ordered the products and is responsible for payment.

6. Based on Hickes' responses, ASD seeks leave to file the Amended Complaint attached hereto as Exhibit C in order to name Robert G. Hickes, M.D., P.C. as an additional defendant and to assert causes against Robert G. Hickes, M.D., P.C.

7. Federal Rule of Civil Procedure 15(a) provides that leave to amend pleadings "shall be freely given when justice so requires."

8. Federal Rules of Civil Procedure 19, 20, and 21 will not be offended by the joinder of this additional defendant at this stage and on the above-stated reasoning.

9. Granting the requested relief will not prejudice any party or Robert G. Hickes, M.D., P.C.

WHEREFORE, for the foregoing reasons, ASD respectfully requests this Honorable Court to enter an Order granting the relief requested and, for the Court's convenience, attaches a proposed Order granting such relief as Exhibit D.

Respectfully submitted,

s/ Heath A. Fite
James J. Robinson (ROB013)
Heath A. Fite (FIT011)
Attorneys for Plaintiff

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of January, 2005, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to all properly registered parties, including Clyde Ellis Brazeale, III.

/s/Heath A. Fite

Of Counsel